

September 29, 2015

**VIA OVERNIGHT MAIL**

Ms. Alice Yeh, Remedial Project Manager  
U.S. Environmental Protection Agency  
290 Broadway, 19th Floor  
New York, New York 10007-1866

Re: Supplemental Documents for the Administrative Record for the Proposed Plan of  
the Lower Eight Miles of the Lower Passaic River Part of the Diamond Alkali  
Superfund Site

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Dear Ms. Yeh:

On behalf of the Lower Passaic River Study Area Site Cooperating Parties Group (CPG), we herewith deliver a thumb drive containing the documents listed on the enclosed Attachment 1 to be included in the administrative record for the "Proposed Plan for the Lower Eight Miles of the Lower Passaic River Part of the Diamond Alkali Superfund Site" ("Proposed Plan") issued by Region 2 of the Environmental Protection Agency ("EPA") on April 11, 2014.

These items contain significant information not contained elsewhere in the administrative record which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. Specifically, these documents include, among other materials, CPG submissions and correspondence related to the remedial investigation and feasibility study (RI/FS) of the 17-mile Lower Passaic River Study Area Part of the Diamond Alkali Superfund Site ("LPRSA") prepared after the close of the Proposed Plan public comment period and since my letter to you dated July 14, 2015.

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The RI/FS is being conducted by the CPG under EPA oversight pursuant to the May 2007 Settlement Agreement and Administrative Order on Consent ("RI/FS AOC"), as well as the mandates of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq. ("CERCLA") and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). The 17-mile LPRSA includes the lower eight miles that is the subject of the Proposed Plan. Accordingly, and as discussed in detail in the CPG's comments on the Proposed Plan, the Focused Feasibility Study ("FFS") upon which the Proposed Plan is based duplicates and essentially attempts to replace the RI/FS for the lower eight miles in a manner in contravention of CERCLA and the NCP; it is not described anywhere in the NCP, is arbitrary and capricious and inconsistent with the NCP, and should not have been used to propose a preferred alternative. Instead, the NCP-compliant RI/FS, which the CPG has spent over eight years and approximately \$130 million conducting to date, should form the basis for the selection by EPA of a response action. Included in this submission are the monthly progress reports for the RI/FS and RM 10.9 removal action, which document the progress of these years of study and action, and should already be a part of the administrative record.

Accordingly, the CPG reasserts that EPA should abandon the improper and procedurally defective FFS Proposed Plan process and focus on the draft RI and FS reports that were, unlike the FFS Proposed Plan, prepared in a manner that is consistent with CERCLA, the NCP and under the RI/FS AOC. The CPG requests that the information contained in the enclosed documents form the basis for the selection by EPA of a response action for the lower eight miles of the Lower Passaic River Part of the Diamond Alkali Superfund Site. Please include them and this cover letter in the administrative record with respect to the FFS Proposed Plan and otherwise with respect to the selection of a response action for the LPRSA.

These documents are submitted for inclusion in the administrative record and are not intended as an admission of any fact, or of the liability of any CPG member.

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The CPG has provided a copy of the thumb drive to the parties listed below.  
Thank you for your attention to these documents.

Very truly yours,



William M. Hyatt, Jr.  
Coordinating Counsel

Enclosures

cc: The Honorable Robert Menendez  
The Honorable Cory Booker  
The Honorable Bill Pascrell, Jr.  
The Honorable Rodney Frelinghuysen  
The Honorable Albio Sires  
The Honorable Donald Payne, Jr.  
Assistant Administrator Mathy Stanislaus  
Regional Administrator Judith Enck  
Deputy Assistant Administrator Barry Breen  
Director James E. Woolford  
Chairman Stephen J. Ellis, CSTAG  
Director Walter Mugdan  
Regional Counsel Eric Schaaf  
The Honorable Chris Christie  
NJ DEP Commissioner Bob Martin  
The Honorable Ras Baraka  
Assemblyman Ralph Caputo  
Assemblywoman Cleopatra Tucker  
Senator Teresa Ruiz  
Assemblywoman Pintor Marin  
Assemblywoman Grace Spencer  
Essex County Executive Joseph DiVincenzo  
Hudson County Executive Tom DeGise  
Senator Nick Sacco  
NJ General Assembly Speaker Vincent Prieto  
Assemblywoman Angelica Jimenez  
Newark City Council Members  
Senator Ron Rice  
Mayor James Fife, Harrison  
Mayor Joe Smith, East Newark  
Mayor Alberto Santos, Kearny  
Mayor Ray Kimble, Belleville

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## Attachment 1

### List of Supplemental Documents for the Proposed Plan/FFS Administrative Record

Description	
A-1	2015. Letter from R. Law to S. Vaughn, re: COPC Mapping White Paper Initial Reply - May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study - CERCLA Docket No. 02-2007-2009 (AOC). July 15, 2015.
A-2	2015. Email from R. Law to S. Vaughn, re: COPC Mapping Issue, Documentation...., acknowledging receipt of the supporting material for the Region's June 10, 2015 paper on COPC mapping, and requesting confirmation regarding other testing results. July 23, 2015.
A-3	2015. Email from R. Law to S. Vaughn, re: Approvals and report/schedule status...., acknowledging receipt of the Region's notice of approval for reports and plan in S. Vaughn's July 20, 2015 email, and addressing the Region's statement on the depth of the exposure zone. July 23, 2015.
A-4	2015. Email from S. Vaughn, re: COPC Mapping Issue, Documentation...., confirming that there are no other results from other alternative RM 10.9 tests that used areas and/or RI data that differ from the test presented in Section 6.2 of the June 10, 2015 paper, and noting availability of the full set of inputs and outputs supporting the COPC mapping paper. July 24, 2015.
A-5	2015. Email from S. Vaughn to R. Law, re: Outstanding BERA items...., addressing draft BERA items including OC-normalized language, Mullica Freshwater data, censoring of above Dundee Dam data, and reference and SQT methodology approach, and attaching Reference and SQT Methodology Revised July 27, 2015. July 27, 2015.
A-6	2015. Email from R. Law to N. Richardson, S. Kirchner, C. Nace, S. Flanagan, S. Vaughn, re: July 29 Region 2 -CPG 17-mi BERA Teleconference Action Items. July 30, 2015.
A-7	2015. Letter from W. Hyatt to S. Flanagan, re: Lower Passaic River Study Area, asserting that the CPG will not fund or perform the Proposed Plan remedy, advising that the CPG has discontinued its efforts towards a preliminary allocation for designing an appropriate targeted remedy, and noting that the preliminary allocation effort had not been for designing and implementing bank-to-bank dredging and capping. August 18, 2015.

A-8	2015. Letter from R. Law to S. Vaughn, re: Lower Passaic River Study Area (LPRSA) Draft Baseline Human Health Risk Assessment (BHHRA) - Cooperating Parties Group (CPG) Response to USEPA Region 2 (Region 2) Comments - May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study - CERCLA Docket No. 02-2007-2009 (AOC), enclosing CPG's Responses to Region 2's June 5, 2015 Comments on the draft 17-mile BHHRA (RTCs), enclosing (1) Responses to Region 2's Comments Received June 5, 2015 on the Draft Lower Passaic River Study Area Baseline Human Health Risk Assessment Delivered June 2014 by the Lower Passaic River Study Area Cooperating Parties Group, dated August 21, 2015; and (2) Memorandum from Betsy Ruffle and Kelly Vosnakis, AECOM, to Rob Law, dmi, re: Updated Exposure Assumption Tables Deliverable to USEPA Region 2, dated August 20, 2015. August 21, 2015.
A-9	2015. Letter from R. Law to S. Vaughn, re: Lower Passaic River Study Area (LPRSA) Draft Baseline Human Health Risk Assessment (BHHRA) - Cooperating Parties Group (CPG) Response to USEPA Region 2 (Region 2) July 15, 2015 Supplemental Comments - May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study - CERCLA Docket No. 02-2007-2009 (AOC), enclosing CPG's Responses to Region 2's July 15, 2015 Supplemental Comments on the draft 17-mile BHHRA (RTCs). September 1, 2015.
A-10	2015. Email from M. Barbara, mab.environmental LLC, to R. Basso, USEPA, re: stating purpose of sampling effort to support the bioaccumulation model by strengthening the basis for the depth of exposure in the sediment of deposit feeding organisms; providing reasons why the CPG does not see a practical, relevant and achievable DQO for the study that would warrant sediment sampling; and stating that the CPG is not opposed to discussing Region 2's request for the collection of additional sediment data. September 3, 2015.
A-11	2015. Letter from R. Law to S. Vaughn, re: Lower Passaic River Study Area (LPRSA) Draft Baseline Ecological Risk Assessment (BERA) - Cooperating Parties Group (CPG) Response to USEPA Region 2 (Region 2) Comments - May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study - CERCLA Docket No. 02-2007-2009 (AOC), enclosing CPG's Responses to Region 2's May 1, 2015 Comments on the draft 17-miles BERA (RTCs). September 10, 2015.
A-12	2015. Letter from R. Law to S. Vaughn, re: Lower Passaic River Study Area (LPRSA) Draft Baseline Ecological Risk Assessment (BERA) - Cooperating Parties Group (CPG) Response to USEPA Region 2 (Region 2) Comments - May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study - CERCLA Docket No. 02-2007-2009 (AOC) - REVISED, reflecting Region's approval of the May 2014 Data Use and Data Evaluation Plan, enclosing (1) BERA RTCs; (2) Tables 1 and 2 and Figure 1; and (3) Table 3. September 15, 2015.

A-13	Lower Passaic River Area, RI/FS Progress Reports. June 2007 - August 2015. Prepared for Lower Passaic River Cooperating Parties Group, Newark, NJ. Prepared by de maximis inc., Clinton, NJ.
A-14	Lower Passaic River Area, River Mile 10.9 Removal Action Monthly Progress Reports. August 2012 - August 2015. Prepared for Lower Passaic River Cooperating Parties Group, Newark, NJ. Prepared by de maximis inc., Clinton, NJ.

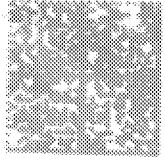
NOTE: This list is not intended to be exclusive and Region 2 should include in the Administrative Record all documents, data, reports, and correspondence (whether or not listed herein) that have been generated or provided to the Region by the CPG during the course of the 17-mile LPRSA RI/FS or otherwise forms the basis for the selection by EPA of a response action for the lower eight miles of the Lower Passaic River part of the Diamond Alkali Superfund Site.

William H. Hyatt, Jr.

**K&L GATES**

One Newark Center  
Tenth Floor  
Newark, NJ 07102

Honorable Judith A. Enck  
Regional Administrator  
USEPA, Region 2  
290 Broadway  
New York, NY 10007-1866



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